

STATE OF MICHIGAN
COURT OF APPEALS

UTAKA WALTON,

Plaintiff-Appellant,

v

WAYNE COUNTY,

Defendant,

and

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
February 28, 2008

No. 275370
Wayne Circuit Court
LC No. 05-526152-NO

Before: White, P.J., and Hoekstra and Schuette, JJ.

PER CURIAM.

In this suit alleging negligence in the inspection and maintenance of a pedestrian overpass, plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant City of Detroit (Detroit) on the basis of governmental immunity. Because the undisputed evidence establishes that Detroit did not have jurisdiction over the overpass from which plaintiff alleges concrete fell and came through the windshield of her car, we affirm.

This case arises out of an automobile accident in which a piece of concrete came through the windshield of plaintiff's car as she drove down I-96 in the city of Detroit. Plaintiff alleges that the concrete fell from the Cherrylawn pedestrian overpass, causing injuries to her face and hand. On appeal, plaintiff argues that the trial court erred in concluding that the overpass from which the concrete allegedly fell was not a sidewalk, and thus did not qualify as a highway for purposes of the highway exception to governmental immunity.¹

¹ The trial court also held that there was a genuine issue of material fact regarding the source of the concrete, and thus, denied Detroit's motion for summary disposition pursuant to MCR 2.116(C)(10). Because we find that the highway exception to governmental immunity does not
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We review de novo a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(7). *Davis v Detroit*, 269 Mich App 376, 378; 711 NW2d 462 (2006). "MCR 2.116(C)(7) tests whether a claim is barred because of immunity granted by law, and requires consideration of all documentary evidence filed or submitted by the parties." *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). A trial court properly grants a motion for summary disposition under MCR 2.116(C)(7) when the undisputed facts establish that the moving party is entitled to immunity granted by law. *Poppen v Tovey*, 256 Mich App 351, 354, 664 NW2d 269 (2003).

Generally, a governmental agency is shielded from tort liability if it is engaged in the exercise or discharge of a governmental function. MCL 691.1407(1); *Grimes v Dep't of Transportation*, 475 Mich 72, 76-77; 715 NW2d 275 (2006). Pursuant to the highway exception, however, a person who sustains bodily injury or property damage "by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency." MCL 691.1402(1). MCL 691.1401(e) defines a highway as "a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway."

We reject plaintiff's assertion that the trial court erred in ruling that the Cherrylawn overpass, which runs perpendicular to the road on which plaintiff was traveling at the time of her injuries, was not a "sidewalk" for purposes of the highway exception to governmental immunity. See *Stabley v Huron-Clinton Metro Park Auth*, 228 Mich App 363, 367-369; 579 NW2d 374 (1998) (indicating that a "sidewalk" is commonly understood to be a separate path along the side of a road); see also *Haaksma v Grand Rapids*, 247 Mich App 44, 55; 634 NW2d 390 (2001). Regardless, liability under the highway exception to governmental immunity is limited to the entity having jurisdiction over the highway. *Carr v City of Lansing*, 259 Mich App 376, 381; 674 NW2d 168 (2003). This Court has held that the term jurisdiction, in the context of the highway exception, is synonymous with control. *Markillie v Bd of Co Rd Comm'rs of Livingston*, 210 Mich App 16, 22; 532 NW2d 878 (1995). As a result, liability for a defective highway is limited "to the entity with the authority to construct, maintain, and repair it." *Id.* Additionally, only one governmental entity can have jurisdiction over a highway, as this Court does not recognize concurrent jurisdiction. *Id.* at 20.

Here, in support of its motion for summary disposition, Detroit provided the affidavit of Robert Kelley of the Michigan Department of Transportation (MDOT), who stated that the Cherrylawn overpass is owned and maintained by MDOT. Furthermore, plaintiff admits that there is no evidence linking Detroit to either the construction or installation of the overpass, and that following her accident, MDOT, not Detroit, constructed repairs on the overpass. The undisputed facts thus establish that Detroit lacked jurisdiction over the overpass in question. *Id.*; *Poppen*, *supra* at 354. Because Detroit has no jurisdiction over the overpass, the highway exception to governmental immunity cannot be asserted against it. *Bennett v City of Lansing*, 52

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apply to Detroit in the present case, it is not necessary to address whether the trial court's ruling regarding the source of the concrete was correct.

Mich App 289, 295; 217 NW2d 54 (1974). Accordingly, Detroit was entitled to summary disposition in its favor under MCR 2.116(C)(7).

Affirmed.

/s/ Helene N. White

/s/ Joel P. Hoekstra

/s/ Bill Schuette